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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-111

In the Matter of

Amendment of Section 73.202(b) RM-8652
Table of Allotments, RM-8704
FM Broadcast Stations.
(Athens and Atlanta, Illinois)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 5, 1996;

Released: March 18, 1996

By the Chief, Allocations Branch:

1. At the request of WMSI, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 8092 (1995), proposing the allotment of Channel 241A at Athens, Illinois, as the community's first local aural transmission service (RM-8652). Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. Comments and a counterproposal were filed by Atlantis Broadcasting Co., L.L.C. ("Atlantis"), proposing the allotment of Channel 242A at Atlanta, Illinois, as the community's first local aural transmission service (RM-8704).² Petitioner and Atlantis filed reply comments.

2. In support of its counterproposal, Atlantis states that Atlanta is an incorporated community located in Logan County, Illinois, with populations of 1,616³ and 30,798, respectively, whereas Athens is an incorporated community located in Menard County, Illinois with populations of 1,404 and 11,164, respectively. Atlantis also states that the allotment of Channel 242A at Atlanta is consistent with the Commission's technical requirements with the imposition of a site restriction. Atlantis asserts, pursuant to the Commission's FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), the Atlanta proposal should prevail. The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)] Since neither proposal would provide a first aural service to an unserved or underserved area, Atlantis states that neither proposal falls under FM allotment priority (1)--first full-time aural service; nor priority (2)--second full-time aural service. However, asserts Atlantis, both proposals would provide a first local aural transmission service (priority (3)) to areas and populations

already well-served by other stations. Thus, since both proposed allotments would provide the respective communities with a first local aural transmission service, Atlantis advises that the Commission has recently affirmed: [I]n a choice among competing counterproposals both involving priority 3 (first local service), the Commission has uniformly made the decision based on population difference and a comparison of reception services. And, where it has found that neither community falls below a threshold level of reception services, the Commission has based its decision on a straight population comparison. *Blanchard, Louisiana and Stephens, Arkansas*, 10 FCC Rcd 9828, 9829 (1995). Atlantis states that the difference in population between the communities of Atlanta and Athens (1,616 vs. 1,404) is 212 persons. Therefore, consistent with long-standing precedent that the population difference is dispositive, Atlantis maintains that the allotment of Channel 242A at Atlanta would advance the objectives of Section 307(b) of the Communications Act of 1934, as amended, and the Commission's FM allotment priorities, citing *Northweye, Cuba, Missouri, et al.* 7 FCC Rcd 1449, 1452 (1992); *Three Oaks and Bridgman, Michigan*, 5 FCC Rcd 1004 (1990); *Obion and Tiptonville, Tennessee*, 7 FCC Rcd 2644 (1992); *Brownstown, Cannelton and Edinburg, Indiana, et al.* 7 FCC Rcd 3173, 3176 ((1992). Accordingly, Atlantis urges the Commission to allot Channel 242A at Atlanta, Illinois, and states its intention to apply for the channel, if allotted. In its reply comments, Atlantis reiterates its earlier arguments.

3. In its reply comments, petitioner opposes Atlantis' mutually exclusive proposal to allot Channel 242A at Atlanta, Illinois. Petitioner submits a letter from the Mayor of Athens stating that since the 1990 U.S. Census, the population has increased by more than 15%, thus the population is now greater than 1,615. By contrast, petitioner asserts that Atlanta "has seen little growth in the last five years." Petitioner also submits a "Market Profiles and Comparison for Athens and Atlanta, Illinois" study prepared by the University of Illinois Cooperative Extension Service demonstrating that within a three-mile radius of the center of each community, the Athens area has a population of 2,383, while the Atlanta area has only 1,890 persons. Moreover, petitioner claims that the university's projections show that by 1999, the Athens area population will remain steady, whereas the Atlanta area will lose an additional 3% of its population (down to 1,832 persons). Therefore, petitioner argues that the 1990 U.S. Census does not accurately reflect the current status of the communities, in that the comparative study conducted by the University of Illinois shows that there are currently more people in the Athens area. However, petitioner states that should the Commission determine that the population difference is too small to determine that Athens should be awarded a preference for a first local aural service, other facts support a grant of the allotment. First, asserts petitioner, a Class A station at Athens would serve over four times the population than a Class A station at Atlanta. Petitioner avers that under priority (4), the primary determining factor is which proposal would serve more people, citing *Greenup, Kentucky and Athens, Ohio* ("Greenup"), 6 FCC Rcd 1493, 1495 (1991).⁴

¹ The community of Atlanta has been added to the caption.

² Public Notice was given to the counterproposal on September 29, 1995, Report No. 2102.

³ All population figures taken from the 1990 U.S. Census unless

otherwise specified.

⁴ Petitioner's reliance on *Greenup* purporting that a petitioner can overcome the presumption that service to more people is in the public interest by demonstrating that it would provide more

Petitioner claims that when considering this factor, the Athens proposal is entitled to an overwhelming preference. Second, petitioner alleges that Atlantis has not demonstrated the existence of other public interest factors supporting the grant of an allotment to Atlanta. While on the other hand, petitioner asserts that it has demonstrated the need for a first local aural transmission service, and if Athens is not awarded a dispositive preference under allotment priority (3), it should receive preference under allotment priority (4). Therefore, petitioner urges that its proposal to allot Channel 241A at Athens be granted.

4. After careful consideration of the proposals, we find that both communities are deserving of a first local aural transmission service. The allotment of Channel 241A at Athens or the allotment of Channel 242A at Atlanta would provide a first local service to either community, fulfilling priority (3). However, an engineering analysis has revealed that there are no alternate Class A channels available at Athens or Atlanta, Illinois. Therefore, our decision must be guided by the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, *supra*. Since neither community would provide a first nor second full-time aural service, our decision must be based on priority (4)—other public interest matters. In this regard, we find that the community of Atlanta (population 1,616) is more populous than the community of Athens (population 1,404). Furthermore, since both communities have substantially more than five reception services, each community is considered to be well-served.⁵ While we note that the population difference is relatively small, nonetheless, on the facts of this case, and in applying the allotment priorities, it is dispositive.⁶ While the Commission compares population sizes in resolving a choice between counterproposals involving co-equal priorities (2) and (3), it notes that the comparison under priority (4) "can take into account the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities . . ." *Id.* at n.8.

5. Accordingly, in a choice between counterproposals, both involving priority (3) (first local service), the Commission has uniformly made the decision based on population difference and a comparison of reception services. And where, as here, it has found that neither community falls below a threshold level of reception services, the Commission has based its decision on a straight population comparison. Thus, it is well-settled that when comparing two competing counterproposals that would provide a first local service, and finding neither community distinguishable based on reception services, the decisional factor is the population difference. Therefore, we believe the public interest would be best served by allotting Channel 242A at

Atlanta, Illinois, as the community's first local aural transmission service, since it has the larger population. *See, e.g., Blanchard, Louisiana and Stephens, Arkansas*, 8 FCC Rcd 7083 (1993), *rev. denied*, 10 FCC Rcd 9828 (1995); *Northweye, et al., Missouri supra*; *Bostwick and Good Hope, Georgia*, 6 FCC Rcd 5084 (1991); *Three Oaks and Bridgman, Michigan, supra*; *West Liberty and Richwood, Ohio*, 6 FCC Rcd 6084 (1991); *Clarksville and Lanesville, Indiana*, 4 FCC Rcd 4968 (1989); and *Roswell, Georgia*, 2 FCC Rcd 2775 (1987).

6. An engineering analysis has determined that Channel 242A can be allotted to Atlanta, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometers (3.8 miles) southwest to avoid short-spacings to the licensed sites of Station WHOW-FM, Channel 240A, Clinton, Illinois, and Station KHTT(FM), Channel 242C1, St. Louis, Missouri, and to the application site (40-40-11 and 89-53-34) for Channel 243A, Farmington, Illinois.⁷

7. Accordingly, pursuant to the authority found in Section 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective **May 2, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Atlanta, Illinois	242A

8. The window period for filing applications will open on **May 2, 1996**, and close on **June 3, 1996**.

9. IT IS FURTHER ORDERED. That the petition filed by WMSI, Inc., proposing the allotment of Channel 241A at Athens, Illinois (RM-8652), IS DENIED.

10. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

service to underserved areas using the discounting methodology described therein, is misplaced. As stated in para. 5, *infra*, the Commission, when comparing counterproposals that would provide a first local aural transmission service, where the proposals are not distinguishable based on reception services, the decisional factor has been the difference in population. Accordingly, the community with the larger population has prevailed.

⁵ The community of Athens receives eleven AM and eight FM reception services, and the community of Atlanta receives thirteen AM and eight FM reception services.

⁶ We acknowledge petitioner's claim that the 1990 U.S. Census population figure for Athens does not accurately reflect the community's current population, with petitioner submitting

documentation alleging a 15% increase in population over the last five years. In this regard, we note that the Commission generally considers the population data contained in the U.S. Census as the official source in determining the population of a community. Accordingly, in this instance, we have used the 1990 U.S. Census figures in comparing the populations of Athens and Atlanta, Illinois. Moreover, had we considered more recent population figures for each community, the Bureau of the Census advises that the 1994 population figures for Athens and Atlanta are 1,509 and 1,669, respectively. Therefore, Atlanta as the larger community would still prevail.

⁷ The coordinates for Channel 242A at Atlanta are North Latitude 40-13-22 and West Longitude 89-17-04.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau